



October 31, 2012

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Stephanie A. Joyce

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Re: CC Docket No. 96-128, Response to Letter from Wright Petitioners (October 24, 2012)

Dear Ms. Dortch:

Securus Technologies, Inc. ("Securus") hereby responds to the letter filed October 24, 2012, by counsel for Martha Wright and her fellow sponsors of the Petitions filed in this docket (the "Wright Petitioners"). More specifically, Securus responds to several assertions and requests that are made in Exhibit A to that letter.

- "Long Distance Inmate Telephone Rates Remain Exorbitant." Here the Petitioners ignore record evidence that inmate calling rates are decreasing dramatically. On May 10, 2012, Securus filed a letter with the Commission that included a spreadsheet stating the calling rates for local, intrastate long-distance, and interstate long-distance calls under eight (8) of its contracts. At correctional facilities operated by the Florida Department of Corrections, local calls have a flat rate of \$0.50 and long-distance calls are only \$0.06 per minute, such that a 12-minute call is \$1.92. At facilities operated by the New Mexico Department of Corrections, every type of call carries only a \$0.65 flat-rate charge – a 12-minute interstate call is only \$0.65. In Missouri Department of Corrections facilities, a 12-minute interstate call is \$1.60.

- "Recent Prison Legal News Article Outlines 'Perverse' Commissions." The Wright Petitioners continue to vilify site commissions without acknowledging that correctional agencies need those revenues either to lessen the financial burden that prison operations put on state and county budgets or to implement programs that benefit inmates. The Securus May 10 filing shows that, in states such as Maryland and Texas where site commissions are mandated by statute, rates are higher. Those site commissions, however, fund unquestionably laudable goals: in Maryland, the revenues go to an "inmate welfare fund" (Md. Corr. Svcs. Code 11-903); in Texas, one-half of the revenues go to a "victims of crime fund" (Tex. Gov't Code 495.027). It bears emphasis that these site commissions were enacted by state legislatures and are enforceable as state correctional law.

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- “Tiered Rate Schedule Acceptable to Parties.” Securus addressed this issue in its letter filed in this docket on July 2, 2012. The Wright Petitioners continue, however, to assert that Securus has agreed to a “tiered rate structure”, based on its comments regarding a proposed set of rules that is under consideration by the New Mexico Public Regulation Commission (“NMPRC”). Wright Petitioners Letter, Ex. A at 2. They fail to note, however, that Securus’s support for the “tiered rate structure” was expressly conditioned upon the ability to obtain a rate variance from the NMPRC if the intrastate rate caps would prevent Securus from serving a particular facility or agency. In other words, even a tiered rate structure is too rigid for the inmate telecommunications market.

The Wright Petitioners also mischaracterize the “tiered rate structure” that the NMPRC is considering. They describe it as “i.e., ... for facilities with fewer than 25 prisoners.” *Id.* The unit of differentiation in the proposed rule, however, is number of inmate calling minutes per month at the particular facility: fewer than 5,000; 5,001 to 10,000; 10,001 to 50,000; and 50,001 and higher.

- “One-Year ‘Fresh Look’ Transition Period.” The Wright Petitioners are asking the Commission to impair or abrogate existing contracts. Their use of the term “fresh look” (*id.*) suggests counsel believes that contracts for inmate calling service are legally similar Interconnection Agreements that are executed or arbitrated pursuant to Sections 251 and 252 of the 1996 Telecommunications Act, 47 U.S.C. §§ 251, 252. They are not the same. And in fact, Interconnection Agreements are themselves “creatures of state law” despite being instruments established in a federal statute. *Global NAPs California, Inc. v. Public Utilities Comm’n of State Of Cal.*, 624 F.3d 1225, 1228 (9th Cir. 2010) (citing *Ill. Bell Tel. Co. v. Global NAPs Ill., Inc.*, 551 F.3d 587, 591 (7th Cir. 2008); *Verizon Cal., Inc. v. Peevey*, 462 F.3d 1142, 1152 (9th Cir. 2006)).

The Commission has jurisdiction and authority over interstate telecommunications rates. The Commission does not have jurisdiction or authority over contracts awarded pursuant to state or county procurement regulations.

- “... An Inmate Should Be Permitted to Reinitiate Disconnected Call To Same Number With No Additional Per-Call Charge.” The Wright Petitioners assert that there is a “problem of improperly disconnected calls” and demand that “any per-call charge should be waived automatically” for a call that is shorter than two minutes. *Id.* They do not provide and have never provided evidence that an inmate call was disconnected without any reason or cause.

Inmate telecommunications service providers are required by contract to, at the least, detect attempts to make three-way calls with inmates or to forward an inmate call. In the vast majority

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of contracts, the service providers are required to terminate a call when such activity is detected. The detection technology that Securus uses is best in its class, and has been honed and improved to eliminate as many false positives as is technologically possible. In the rare occasion that a call is disconnected without reason or cause, Securus will refund the per-call charge.

In addition, it is very common for an inmate call to be shorter than two minutes in length by the choice of one or both parties. For these reasons, short inmate calls are not a reasonable ground on which to impose the punitive measure of giving out “automatic” free per-call charges as a matter of federal law.

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Please contact me at 202.857.6081 with any questions. Thank you for your consideration.

Sincerely,

s/Stephanie A. Joyce

Counsel to Securus Technologies, Inc.

Cc: Chairman Julius Genachowski (*All via electronic mail*)
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Ajit Pai
Commissioner Jessica Rosenworcel
Michael Steffen, Legal Advisor to Chairman Genachowski
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